

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JONATHAN B.,

Claimant,

and

NORTH LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2011120620

DECISION

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Van Nuys, California, on February 28, 2012.

Rhonda Campbell, Contract Officer, represented North Los Angeles Regional Center (Regional Center or Service Agency).

Claimant's mother, Elizabeth H.¹, represented Claimant with the assistance of Diana Kelly and Frank Mendez.

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision.

ISSUE

1. Is Claimant eligible for Regional Center services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code² section 4500 et seq. (Lanterman Act)?

¹ Initials have been used to protect the privacy of Claimant and his family.

² All further statutory references are to the Welfare and Institutions Code.

FINDINGS OF FACT

1. Claimant is 19 years old, and resides with his mother and his 15-year-old sister.

2. a. Claimant attends Polytechnic High School. He is in the eleventh grade and receives special education services. His latest individualized education plan (IEP) was prepared after a meeting on September 17, 2009, and contains the following information. Claimant is eligible for services based on a diagnosis of autism, which was also referred to in the IEP as his "Asperger's Syndrome condition." (Exh. 3, at p. 4.) He attends general education classes, with educational supports, such as small collaborative groups, extended time, shortened assignments and assessments, graphic organizers, calculators and arithmetic charts for tests, individualized and structured instruction, hands-on experience, and prompting during tests. He also receives individual counseling services.

b. With respect to his present level of performance, it is noted that "It appears that he had difficulties in building and maintaining relationships in general. It appears that he continues experiencing feelings of anxiety regarding peer relationships. This has improved as Jonathan has been made aware of his disability and does not regard himself as negatively as before. Jonathan is still confused about the behaviors and actions of others. He still has difficulties with situations involving intimacy. He has expressed uneasiness when female friends insist on hugging him." (Exhibit 3, at p. 4.) It was also noted that "Jonathan has improved socially inside and outside the classroom over the past year. The after school video club has given him the opportunity to gain friends. He has shown improving social behavior towards peers and adults. In class he has increased class participation by answering questions orally when called upon. His group participation continues to expand." (Exhibit 3, at p. 3.)

3. No assessment was received from Claimant's school setting forth the basis on which he was made eligible for special education services under the category of autism. Heike Ballmaier, Psy.D. (Ballmaier), Service Agency Supervisor, Psychology/Intake Service Department, testified that in her experience school districts do not perform the full assessment contemplated by, or adhere to the requirements of, the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), in their determinations that students are eligible or services based on a classification of autism.

4. Claimant sought Regional Center eligibility in early 2010. On March 11, 2010, Christa Lopez (Lopez), Intake Vendor, completed a Social Assessment Report. She noted that Claimant independently cares for his hygiene and grooming needs. Claimant takes public transportation to go to school, and makes purchases independently. His speech is a bit scripted. He speaks in complete sentences, but needs prompts to maintain a conversation and relate experiences. Claimant usually keeps to himself, but has begun to try to make friends because he feels lonely. He joined a game club about two years ago, and enjoys spending time with the five friends he met in the group. He had no pretend play, and did not share things or feelings. He did not display repetitive behaviors or unusual body movements. Lopez recommended further assessment and review of records for eligibility determination.

5. On April 26, 2010, Service Agency physician Margaret Swaine (Swaine) conducted a review of available medical information, which indicated regular pediatric care in the community. In her opinion, the records did not support the presence of a chronic medical condition, or substantially handicapping cerebral palsy or epilepsy. No medications were reported in the records reviewed. Dr. Swaine recommended a psychological assessment.

6. a. John Lamont, Ph.D. (Lamont), conducted a psychological evaluation on May 25, 2010. He administered the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS), the Vineland Adaptive Behavior Scales – Second Edition (Vineland), the Autism Diagnostic Observation Schedule (ADOS), and the Autism Diagnostic Interview (ADI-R).

b. Using the WAIS, Dr. Lamont concluded that Claimant’s cognitive ability was in the average range. He was unable to provide a full scale intelligent quotient number because of the scatter between the results of subtests, and opined that the results of the perceptual reasoning index, 105, constituted an accurate measure of Claimant’s cognitive ability.

c. Mild adaptive skills deficits were measured, through the Vineland, in daily living skills and in socialization. With respect to the former, Dr. Lamont noted that Claimant can take medications in accord with instructions, once his mother shows him. He can take care of minor cuts and can wash and dry his hair. In social functioning, Claimant is careful when talking about personal matters, and sometimes understands that others do not know what he wants unless he tells them. In terms of communication, Claimant’s score was in the borderline deficit range. For example, Claimant can listen to a lecture for 30 minutes, but his comprehension is poor.

d. Dr. Lamont administered two tests diagnostic of autism. In the ADI-R, with Claimant as the respondent, Claimant scored above the autism cutoff in one of three areas, reciprocal social interaction, and below the cutoff in the other two, communication and restricted, repetitive and stereotypic patterns of behavior. In the ADOS, an observational measure designed to elicit and quantify overt behaviors characteristic of autism, Claimant’s score was below that required to suggest a diagnosis of Autistic Disorder under DSM-IV criteria.

e. Dr. Lamont diagnosed Claimant with Pervasive Developmental Disorder, Not Otherwise Specified (PDD-NOS). Of the six out of 12 criteria required by the DSM-IV for a diagnosis of autism, Claimant only met four: marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures and gestures to regulate social interaction (significant impairment); failure to develop peer relationships appropriate to developmental level (significant impairment); lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level (mild impairment); and encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus (mild impairment). In Dr. Lamont’s opinion, the diagnostic criteria that were present established the presence of PDD-NOS.

7. Dr. Ballmaier agreed with Dr. Lamont that Claimant was not eligible for Regional Center services by reason of autism. She and other clinicians at Service Agency concluded during a meeting on June 30, 2010, that Claimant was not eligible for services under the Lanterman Act.

8. In September 2011, Claimant submitted a report from Westview Services, Inc. dated September 1, 2011, entitled External Situational Assessment Summary (Westview Report). The assessment was conducted to determine Claimant's readiness for employment and employability. Claimant was placed at a Petco store where he was assessed. He was scheduled to work five- to eight-hour shifts for four to five days per week as a stick clerk. His duties included dusting, cleaning, taking merchandise back to its location, and collecting carts. The assessor concluded that Claimant did not demonstrate skills and abilities that would help him succeed in competitive employment. He was unable to learn the tasks assigned to him or work independently, needing assistance to switch from task to task as well as to complete the tasks in accordance to the instructions given.

9. The Westview Report did not contain any diagnosis. Dr. Ballmaier reviewed the document, and testified that the report did not change her opinion regarding Claimant's eligibility.

10. On November 21, 2011, Service Agency issued a Notice of Proposed Action, informing Claimant that he was not eligible for services under the Lanterman Act. Claimant filed a Fair Hearing Request on December 15, 2011, which was received by Service Agency on December 19, 2011.

LEGAL CONCLUSIONS

1. In order to be eligible to receive services from a regional center, a claimant must have a developmental disability, which is specifically defined as "a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature." (§ 4512, subd. (a).)

2. In this case, no evidence was presented to establish that Claimant has cerebral palsy or epilepsy, and there is no contention that he has either condition. Claimant does present with some characteristics associated with Autism Disorder, as noted in Dr. Lamont's report. However, these did not rise to the level required for a diagnosis of Autism Disorder. Rather, Dr. Lamont diagnosed Claimant with PDD-NOS, and his opinion was not contradicted at the hearing. The evidence of cognitive functioning and the opinions of Drs

Ballmaier and Lamont indicate that Claimant does not have mental retardation, or a condition closely related to mental retardation or requiring treatment similar to that required by individuals with mental retardation. While Claimant has some adaptive skills deficits in daily living skills and in socialization, these are insufficient to establish the presence of a developmental disability. In sum, Claimant has not been diagnosed with an eligible condition, and the evidence received at the hearing is to the contrary.

3. By reason of the foregoing factual findings and legal conclusions, Claimant did not establish that he has a developmental disability that makes him eligible for services under the Lanterman Act.

ORDER

Claimant's appeal is denied.

DATED:

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.